IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 29530 of 2004(M)

AGAINST THE ORDER IN EP.328/2003 IN
OS.862/1986 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

JANCY SEBASTIAN, W/O. SEBASTIAN,
CHITTILAPPILLY HOUSE, THRISSUR P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

SIDCO MOHAN KERALA LIMITED,
REPRESENTED BY DIRECTOR-IN CHARGE,
C.R.JAYACHANDRA VARMA, THRISSUR P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.M.A.MANHU, SC, SIDCO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.29530 OF 2004

APPENDIX

PETITIONER'S EXTS:

Ext.P1 - TRUE COPY OF EP FILED BY RESPONDENT AS EP.328/03 IN O.S.862/86 OF SUB COURT, THRISSUR DT.21.7.03.

Ext.P2 – TRUE COPY OF OBJECTIONS FILED BY PETR. TO Ext.P1 DT. NIL.

Ext.P3 – TRUE COPY OF ORDER PASSED BY II ADDL. SUB COURT, THRISSUR IN EP.328/03 IN O.S.862/86 DT.19.6.04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.29530 OF 2004

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DATED THIS THE 30TH MAY, 2007

J U D G M E N T

The order of attachment of salary issued by the execution court is under challenge in this proceeding under Article 227 of the Constitution of India initiated at the instance of the judgment-debtor.

2. On behalf of the learned counsel for the judgment-debtor, a very fervent request was made for adjournment. The request is opposed by Mr.M.A.Manhu, Standing Counsel for the respondent-Corporation who submits that the petitioner is a Professor in the Government Engineering College and what has been ordered to be attached is even less than what is attachable in terms of Section 60 of the Code of Civil Procedure.

3. On going through the Memorandum of Writ Petition, I find that the ground which is prominently urged is that Ext.P3 order is a non-speaking order which does not refer to Section 60 of the Code at all. It is true that Section 60 of the C.P.C. is not referred to in Ext.P3 and the learned Sub Judge has not found that what is ordered to be attached is the attachable portion under that Section. But having regard to the undisputed position that the petitioner is a Professor in the Government Engineering College, I do not find any difficulty to

accept the submission of Mr.Manhu, Standing Counsel for the respondent-Corporation that the attachable salary of the petitioner should be around what is ordered to be attached. I find that this Court granted stay on condition that the petitioner remits a sum of Rs.3000/- within 10 days and obviously that condition was complied with. Mr.Manhu submits that he has no information as to whether the subsequent condition that a further amount shall be paid has been complied with.

4. Whatever that be, I am inclined to grant an opportunity to the petitioner for proving before the court below as to what exactly is the amount attachable out of her salary in terms of Section 60 of the Code. But I am inclined to do so only on conditions. The impugned order Ext.P3 is set aside subject to the following conditions:-

i) The petitioner shall remit a sum of Rs.10,000/- by 15.6.2007 towards the decree-debt.

ii) The petitioner shall produce her latest salary certificate before the court below within two weeks of receiving copy of this judgment.

If both the conditions are complied with by the petitioner, the court below will post the execution petition for hearing on the question as to

what is the attachable portion of the petitioner's salary, conduct hearing and take a fresh decision. Fresh decision as directed above will be taken by the court below within two months of the petitioner complying with above two conditions. Till such time as fresh orders as directed above are issued by the court below, the petitioner shall continue to remit every month commencing from 15th of July, 2007 at the rate of Rs.5000/- towards the decree-debt. If the conditions are not complied with by the petitioner, the impugned order will stand confirmed.

The Writ Petition is disposed of as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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